

	)	
<b>M.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0081</b>
	)	<b>Issued: April 23, 2019</b>
<b>U.S. POSTAL SERVICE, INTERNATIONAL</b>	)	
<b>SERVICE CENTER, Los Angeles, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 15, 2018 appellant filed a timely appeal from an August 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether OWCP met its burden of proof to terminate appellant's medical benefits, effective August 24, 2018.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On June 21, 2017 appellant, then a 59-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she experienced pain in her low back, left shoulder, and the left side of her neck causally related to factors of her federal employment. She did not stop work. The employing establishment indicated that appellant was last exposed to the work factors alleged to have caused her condition on April 17, 2017. OWCP accepted the claim for impingement syndrome of the left shoulder, lumbar intervertebral disc degeneration, and lumbar spinal stenosis.

OWCP noted that it had previously accepted that appellant sustained contusions of the right hand and wrist on November 11, 2016. It assigned OWCP File No. xxxxxx822. OWCP indicated that appellant had performed modified employment beginning November 6, 2014 due to her right hand and wrist condition.

On September 22, 2017 OWCP referred appellant to Dr. Richard A. Rogachefsky, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated September 28, 2017, Dr. James T. Tran, a Board-certified internist, discussed appellant's history of injury and her current complaints of back pain radiating into her left thigh. He diagnosed lumbar spinal stenosis and lumbar intervertebral disc degeneration that had failed conservative treatment. Dr. Tran requested authorization for a lumbar laminectomy and foraminotomy at L3-4 and L4-5.

In a report dated October 5, 2017, Dr. Rogachefsky reviewed appellant's history of injuries to her right wrist on November 11, 2016 and to her left shoulder and spine moving mail and sorting parcels in April 2017. On examination he found a positive left shoulder impingement test and noted that x-rays of the right wrist showed Kienbock's disease and degenerative arthritis at the distal radial ulnar nerve. Dr. Rogachefsky opined, "The conditions of the left and right hand, lumbosacral spine, and left shoulder are resolved with regards to the work injuries of November 2016 and April 2017." He found that appellant could resume her usual employment and required no further medical treatment.

OWCP determined that a conflict existed between Dr. Tran and Dr. Rogachefsky regarding whether the accepted conditions had resolved. It noted that Dr. Tran had found that appellant required lumbar surgery due to her employment injury.

On May 10, 2018 OWCP referred appellant to Dr. Charles Sadler, a Board-certified orthopedic surgeon, for an impartial medical examination. It provided Dr. Sadler with the medical record along with a statement of accepted facts (SOAF) indicating that it had accepted the claim for left shoulder impingement syndrome, lumbar intervertebral disc degeneration, and lumbar spinal stenosis.

In a report dated June 18, 2018, Dr. Sadler reviewed appellant's history of injury and the medical evidence of record, including the results of diagnostic testing. He disagreed with OWCP's acceptance of left shoulder impingement syndrome, asserting that the June 21, 2017 magnetic resonance imaging (MRI) scan showed tenosynovitis without impingement. Dr. Sadler proposed instead a diagnosis of left shoulder biceps tenosynovitis. He found that diagnostic testing

established the diagnoses provided in the SOAF of lumbar spinal stenosis and lumbar disc degeneration but opined that these conditions were unrelated to the accepted employment. Dr. Sadler determined that none of the diagnosed conditions set forth in the SOAF were causally related to the accepted employment injury. He advised that appellant had no need for further medical treatment and no employment-related disability.

On July 23, 2018 OWCP notified appellant of its proposed termination of her entitlement to medical benefits as the evidence established that she had no residuals of her accepted left shoulder impingement syndrome, intervertebral disc degeneration, and lumbar spinal stenosis.

Thereafter, appellant submitted a July 16, 2018 progress report from Dr. Christopher P. DeCarlo, an attending physiatrist, who evaluated her for continued left shoulder and low back pain. Dr. DeCarlo diagnosed degenerative disc disease of the lumbar spine, facet arthropathy, neural foraminal stenosis, and tenosynovitis and impingement syndrome of the left shoulder.

By decision dated August 24, 2018, OWCP terminated appellant's medical benefits, effective that date. It found that the opinion of Dr. Sadler represented the weight of the evidence and established that she had no need for further medical treatment due to her accepted employment injury.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>5</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>6</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

---

<sup>3</sup> *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>4</sup> *S.M.*, Docket No. 18-0673 (issued January 25, 2019).

<sup>5</sup> *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

<sup>6</sup> 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019).

<sup>7</sup> *D.W.*, Docket No. 18-0123 (issued October 4, 2018).

OWCP's procedures provide as follows:

"The [claims examiner] is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. When the [medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."<sup>8</sup>

### ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's medical benefits, effective August 24, 2018.

OWCP properly found a conflict existed between Dr. Tran, appellant's treating physician, and Dr. Rogachefsky, an OWCP referral physician, regarding whether she had continued residuals of her employment injury, accepted for left shoulder impingement syndrome, lumbar intervertebral disc degeneration, and lumbar spinal stenosis. It referred her to Dr. Sadler, a Board-certified orthopedic surgeon, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

When there exists a conflict in medical opinion and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.<sup>9</sup>

OWCP provided Dr. Sadler with a SOAF advising that it had accepted left shoulder impingement syndrome, lumbar intervertebral disc degeneration, and lumbar spinal stenosis as employment related. In a report dated June 18, 2018, Dr. Sadler found that appellant had not sustained left shoulder impingement syndrome. He further determined that she had lumbar disc degeneration and lumbar spinal stenosis but that the conditions were unrelated to the accepted employment injury.

The Board finds that the opinion of Dr. Sadler is not entitled to the special weight afforded an IME as it is outside of the SOAF.<sup>10</sup> While he reviewed the medical evidence in detail, Dr. Sadler did not accept the facts as presented in the SOAF in rendering his medical opinion. It is OWCP's responsibility to provide a complete and proper framework for a physician by preparing a SOAF.<sup>11</sup> OWCP procedures and Board precedent dictate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is

---

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>9</sup> *M.S.*, Docket No. 18-1228 (issued March 8, 2019).

<sup>10</sup> *M.D.*, Docket No. 18-0468 (issued September 4, 2018).

<sup>11</sup> *D.E.*, Docket No. 17-1794 (issued April 13, 2018).

incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>12</sup>

Dr. Sadler indicated that he had reviewed the SOAF and concluded that none of the accepted conditions were employment related. The Board has explained that the report of an IME who disregards a critical element(s) of the SOAF and disagrees with the medical basis for acceptance of a condition is defective and insufficient to resolve the existing conflict of medical opinion evidence.<sup>13</sup> Dr. Sadler's report is of diminished probative value as his opinion did not rely on the SOAF and contradicted critical elements of the SOAF. The Board notes that it is the function of a medical expert to give an opinion only on medical questions, not to find facts.<sup>14</sup> Dr. Sadler did not rely on the SOAF and as such his report is not based on an accurate history of injury. His report is therefore insufficient to meet OWCP's burden of proof to terminate medical benefits.<sup>15</sup>

Accordingly, OWCP improperly terminated appellant's medical benefits, effective August 24, 2018.

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's medical benefits, effective August 24, 2018.

---

<sup>12</sup> *Supra* note 9.

<sup>13</sup> *J.S.*, Docket No. 17-0626 (issued January 22, 2019).

<sup>14</sup> *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>15</sup> *B.B.*, Docket No. 18-1121 (issued January 8, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 23, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board